

ENTERED

October 07, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PATRICK HENRY MURPHY,

Plaintiff,

v.

TDCJ EXECUTIVE DIRECTOR,

BRYAN COLLIER, et al.,

Respondent.§
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CIVIL ACTION NO. H-19-1106

ORDER

In 2003, Patrick Henry Murphy stood trial in the 283rd District Court of Dallas County, Texas for killing a police officer. A jury convicted him of capital murder and he was sentenced to death. Murphy subsequently challenged his conviction and sentence in both state and federal court. In December 2018, the State of Texas set an execution date of Thursday, March 28, 2019.

On Tuesday, March 26, 2019, Murphy filed a complaint pursuant to 42 U.S.C. § 1983 challenging Texas Department of Criminal Justice (“TDCJ”) procedures that specify which individuals may accompany an inmate during the execution of his death sentence. On March 28, 2019, the Supreme Court stayed Murphy’s execution in a brief order:

The application for a stay of execution of sentence of death presented to Justice ALITO and by him referred to the Court is granted. The State may not carry out Murphy’s execution pending the timely filing and disposition of a petition for a writ of certiorari unless the State permits Murphy’s Buddhist spiritual advisor or another Buddhist reverend of the State’s choosing to accompany Murphy in the execution chamber during the execution.

Murphy v. Collier, 139 S. Ct. 1475 (Mem) (2019).

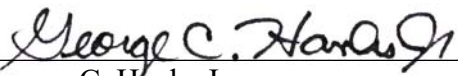
On April 2, only five days after the Supreme Court granted a stay Texas changed its policy, effective immediately. On April 18, 2019, Murphy filed an amended complaint that

incorporated arguments reflecting the changes in Texas policy. Since then, the parties have filed significant briefing in this Court. Importantly, both parties have moved for summary judgment. (Docket Entry Nos. 38, 39).

While briefing has proceeded in this Court, Murphy has filed a petition for a writ of certiorari in the Supreme Court. Murphy has filed an advisory in this Court stating that, because of the briefing schedule in the Supreme Court, “Murphy’s Petition for Writ of Certiorari will probably be conferenced on November 1.” (Docket Entry No. 44 at 2, n.1).

On September 3, 2019, this case was reassigned to the undersigned. (Docket Entry No. 42). The state trial court recently signed a warrant setting Murphy’s execution for November 13, 2019. (Docket Entry No. 43). With the proceedings pending in the Supreme Court and the approaching execution date, the Court is concerned that jurisdictional or jurisprudential limitations may counsel against adjudicating any matters in federal district court. Accordingly, the Court **ORDERS** the parties to brief what effect the pendency of the petition for a writ of certiorari has on the matters before this Court. The parties will file their briefing relating to jurisdictional issues on or before **October 18, 2019**.

SIGNED this day 7th day of October, 2019.



George C. Hanks Jr.
United States District Judge